

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 03, 2020

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, STATE OF
COLORADO, STATE OF CONNECTICUT,
STATE OF ILLINOIS, STATE OF
MARYLAND, STATE OF MICHIGAN,
STATE OF MINNESOTA, STATE OF
NEVADA, STATE OF NEW MEXICO,
STATE OF OREGON, STATE OF RHODE
ISLAND, STATE OF VERMONT,
COMMONWEALTH OF VIRGINIA, and
STATE OF WISCONSIN,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States of America;
UNITED STATES OF AMERICA; LOUIS
DEJOY, in his official capacity as Postmaster
General; UNITED STATES POSTAL
SERVICE,

Defendants.

NO. 1:20-CV-03127-SAB

ORDER GRANTING
DEFENDANTS' UNOPPOSED
MOTION FOR ENTRY OF A
PROTECTIVE ORDER

Before the Court is Defendants' Unopposed Motion for Entry of a Protective
Order, ECF No. 49. Pursuant to Federal Rule of Civil Procedure 26(c), Defendants

1 request entry of a protective order to permit Defendant United States Postal Service
2 to disclose certain confidential information.

3 Defendants have determined that some of the information responsive to
4 Plaintiffs' Expedited Discovery Requests likely contain confidential commercial
5 information protected from general release pursuant to 39 U.S.C. § 410(c)(2).
6 Defendants also seek a protective order in order to disclose information protected by
7 the Trades Secret Act. *See* 18 U.S.C. § 1905. Good cause exists to grant
8 Defendants' motion.
9

10 Accordingly, it is **HEREBY ORDERED**:

11 1. Defendants' Unopposed Motion for Entry of a Protective Order, ECF No.
12 49, is **GRANTED**.
13

14 2. The Court enters the following Protective Order:

15 **ORDER**

16 1. This Protective Order ("Order") protects confidential documents and
17 information that may be produced as part of the Expedited Discovery Response, or as
18 otherwise required, in the course of the proceedings in this Action and to set forth
19 mandatory procedures for persons who receive or review documents or information
20 produced subject to this Order.
21

22 2. Confidential Information. USPS and its counsel are hereby authorized to
23 release confidential business information that is contained in the Expedited Discovery
24 Response.
25

26 3. Definitions.

27 a. Covered Documents. Those documents in the Expedited
28

1 Discovery Response, or as otherwise required in the course of proceedings in this
2 Action, that USPS or its counsel identifies as containing confidential business
3 information by the designation “Confidential” are hereinafter referred to as “Covered
4 Documents.”

5
6 b. Covered Information. All information that USPS or its counsel
7 identifies as being confidential business information as well as any information
8 derived solely from Covered Documents, even if incorporated in another document,
9 pleading, or referred to in testimony, is hereinafter referred to as “Covered
10 Information.”

11
12 4. Designations of Information as “Confidential”. USPS will designate as
13 “Confidential” only the material that it determines is confidential business
14 information. If only some of the information on a page is confidential, then USPS
15 will indicate which part is confidential and protected by this Order. If all the
16 information on a page contains confidential business information, then USPS will
17 designate the whole page as “confidential.”

18
19 5. Explanation of “Confidential” Designations or Redactions. If Plaintiffs’
20 counsel, in good faith after reviewing the Expedited Discovery Response, notifies
21 USPS which confidentiality designations or redactions are either not self-evident
22 from the context of the Expedited Discovery Response or are challenged as not being
23 confidential or properly redacted, USPS will promptly provide to Plaintiffs’ counsel
24 explanations of the nature of any Redacted Information, and reasons that it believes
25 that Covered Documents, Covered Information, or Redacted Information require
26 confidentiality.
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1 6. Persons to Whom Disclosures May Be Made. Disclosure of Covered
2 Documents or Covered Information in the Expedited Discovery Response by
3 Plaintiffs' counsel is strictly limited to

- 4 a. the Court; the Court's staff; court reporters;
5 b. the Department of Justice;
6 c. Plaintiffs' counsel, including associated personnel necessary to assist
7 Plaintiffs' counsel in this litigation, such as litigation assistants,
8 paralegals, secretarial or other clerical personnel, and litigation
9 support services, including outside copying services;
10 d. experts and consultants to whom disclosure is reasonably necessary
11 for this litigation and who have signed the "Acknowledgment and
12 Agreement to Be Bound" (Exhibit A);
13 e. during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the "Acknowledgment and
15 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
16 designating party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal confidential
18 material must be separately bound by the court reporter and may not
19 be disclosed to anyone except as permitted under this agreement;
20 f. the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the
22 information.
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1 7. Nondisclosure of Covered Documents and Covered Information.

2 Plaintiffs' counsel may use Covered Documents or Covered Information produced
3 subject to this Order only for the purpose of this litigation (and all appeals thereof).

4 8. Covered Documents and Covered Information To Be Returned.

5 Plaintiffs' counsel shall return or destroy any and all Covered Documents or Covered
6 Information to USPS's counsel within ten (10) business days following the
7 termination of this Action (including any appeals hereof). Any work product created
8 or filed by Plaintiffs' counsel that contain Covered Documents or Covered
9 Information and are retained by Plaintiffs' counsel as part of their litigation files
10 remain subject to the terms of this Order.
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12 9. Covered Documents and Covered Information To Be Filed Under Seal.

13 Those portions of any filings with the Court that include Covered Documents or
14 Covered Information produced subject to this Order shall be made under seal pursuant
15 to the applicable rules of the Court.
16

17 10. Inadvertent Failures to Designate. If timely corrected, an inadvertent

18 failure to designate qualified information or items does not, standing alone, waive the
19 designating party's right to secure protection under this agreement for such material.
20 Upon timely correction of a designation, the receiving party must make reasonable
21 efforts to ensure that the material is treated in accordance with the provisions of this
22 agreement.
23

24 11. Dispute Resolution. In the event that any party to this Action disagrees at

25 any stage of these proceedings with the designation of Covered Documents or
26 Covered Information, the parties shall try first to resolve such dispute in good faith
27 on an informal basis. If the parties cannot resolve a challenge without court
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1 intervention, the designating party may file and serve a motion to retain
2 confidentiality. The burden of persuasion in any such motion shall be on the
3 designating party. All parties shall continue to maintain the material in question as
4 confidential until the court rules on the challenge
5

6 12. Continued Effect. Insofar as the provisions of this Order restrict the
7 communication and use of the documents produced thereunder, this Order shall
8 continue to be binding after the conclusion of this litigation except (a) that there shall
9 be no restriction on documents that are used as exhibits in court (unless such exhibits
10 were filed under seal) and (b) that a party may seek the written permission of the
11 producing party or further order of the Court with respect to dissolution or
12 modification of this Order.
13

14 13. Unauthorized Disclosure. Should any Covered Documents or Covered
15 Information be disclosed, through inadvertence or otherwise, to any person not
16 authorized to receive same under this Order, then the disclosing party shall use its
17 best efforts to bind such person to the terms of this Order. In particular, the disclosing
18 party shall (a) promptly inform such person in writing of all the provisions of this
19 Order and use its best efforts to immediately retrieve all copies of the Covered
20 Documents or Covered Information; (b) simultaneously serve, by electronic mail
21 upon the USPS, copies of the inadvertently disclosed material or a full description of
22 the inadvertently disclosed material; and (c) request such person to sign the agreement
23 in the form attached hereto as Exhibit A. The executed agreement shall promptly be
24 served by electronic mail upon the USPS.
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27 14. Nonparty Demand. If either party to this Action receives or is served with
28 a third-party subpoena, request for production, or some other legal demand seeking

1 Covered Documents or Covered Information, that party shall give prompt actual
2 written notice, within ten (10) days of receipt of such subpoena, demand, or legal
3 process, to the opposing party. USPS may then object to the production of the
4 Covered Documents or Covered Information to the extent permitted by law. Should
5 the third-party seeking access to the Covered Documents or Covered Information take
6 action to enforce such a subpoena, demand or other legal process, USPS has the
7 affirmative obligation to initiate (or intervene in) a judicial proceeding to defend and
8 substantiate any claim that the Covered Documents or Covered Information is not
9 subject to disclosure.
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11 15. Nothing in this Order shall bar amendment of this Order by agreement of
12 the parties or by Order of the Court. Any such amendment made by agreement of the
13 parties shall be made in writing.
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15 16. This Order shall remain in full force and effect until modified,
16 superseded, or terminated on the record by agreement of the parties or by an Order of
17 the Court.

18 17. The parties agree to submit this Order for entry by the Court and to be
19 bound by its terms while waiting its entry by the Court.
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1 18. Nothing in this Order shall be construed as prohibiting or otherwise
2 restricting USPS' own use or disclosure of Covered Documents or Covered
3 Information subject to this Order, including disclosure to the Department of Justice.

4 **IT IS SO ORDERED.** The District court is hereby directed to enter this Order
5 and to provide copies to counsel.
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7 DATED this 3rd day of September 2020.



11 A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

12 Stanley A. Bastian
13 Chief United States District Judge
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EXHIBIT A

Acknowledgment and Agreement to be Bound

a. My name is _____. I am over the age of twenty-one years, of sound mind and capable of making this Affidavit. I am personally acquainted with the facts stated herein and know them to be true and correct. I have never been convicted of a felony or a crime involving moral turpitude.

b. My address is _____.

c. My present occupation is _____, and I am currently employed by _____.

d. I have received a copy of the Protective Order in this Action, and have carefully read and understand its provisions.

e. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Protective Order, and will not copy or use for purposes other than for this Action, any "Covered Documents or Covered Information" (as those terms are defined in the Protective Order) which I receive in this Action.

f. I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

g. I declare under penalty of perjury that the foregoing is true and correct.

Date:

City and State where sworn and signed:

1 Printed name:

2 Signature:

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